



October 28, 2021

The Honorable Ron Wyden
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Neal
Chairman
U.S. House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Kevin Brady
Ranking Member
U.S. House Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515

Re: Corporate Profits Minimum Tax in Reconciliation Legislation Being Considered

Dear Chairmen Wyden and Neal, and Ranking Members Crapo and Brady:

The American Institute of CPAs (AICPA) provides comments and concerns on the proposed Corporate Profits Minimum Tax. It has been proposed as a minimum tax based upon 15% of adjusted financial statement income, and a prior version was previously introduced in August 2021 as the Real Corporate Profits Tax Act. The recent proposal is of particular relevance to the accounting profession.

The AICPA is a long-time advocate for a tax system based on principles of good tax policy.¹ We look forward to working with Congress as the reconciliation package moves forward to ensure that the proposed changes are administrable, equitable, and meet the needs of both taxpayers and tax practitioners. In this regard, we highlight some of the key issues with this corporate minimum tax on book income that we have identified for your consideration. We note that we likely will have additional comments and insights as we further analyze the reconciliation legislation. In addition, as Congress moves forward with a reconciliation bill, it is important that special care is given to transition rules and to provide sufficient time and flexibility to implement the transition rules and offer penalty relief as needed.

Background

As background, under the tax law, certain tax benefits, such as deductions, credits, and exemptions, can significantly reduce a taxpayer's regular tax amount. An alternative minimum tax (AMT) sets limits on those benefits, and it helps ensure taxpayers pay at least a minimum amount of tax. An AMT typically equals the excess, if any, of the tentative minimum tax over the regular tax liability. Pre-Tax Cuts and Jobs Act (TCJA), a corporation would calculate AMT by comparing regular corporate income tax to AMT and would pay the higher of the two. In order to calculate AMT, a corporation would determine its

¹ See AICPA Principles of Good Tax Policy.

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alternative minimum taxable income (AMTI), which was regular taxable income after various adjustments or preferences added onto it.

The proposed *Corporate Profits Minimum Tax* is a revamped corporate minimum tax of 15% on book income for corporations with financial statement income in excess of \$1 billion and a lower \$100 million limitation applies to foreign-parented corporations. It is reported that it would apply to approximately 200 companies. This proposed corporate minimum tax would operate much like the corporate AMT that was repealed in 2017 under the TCJA.

The proposed *Corporate Profits Minimum Tax* would also include certain business credits that would offset the minimum tax, including research and development (R&D), clean energy, and housing and include some flexibilities for companies to carryforward losses and claim a minimum tax credit against regular tax in future years.

In general, proponents of minimum taxes on book income argue that they are politically feasible alternatives to directly reforming the corporate tax code. However, this type of tax has many drawbacks and may have unintended consequences that should be carefully considered as outlined below.

AICPA Concerns

AICPA is concerned that the proposed minimum corporate tax violates numerous elements of our twelve guiding principles of good tax policy. The introduction of an alternative tax system that is not based on tax law will not simplify the tax system, be certain, be neutral with respect to decision making by management, promote economic growth and efficiency, be transparent, nor minimize the tax gap.

We, therefore, encourage Congress not to include in the reconciliation legislation this minimum corporate tax. If Congress does include this minimum corporate tax provision, these additional specific comments are important for Congress to consider.

The AICPA recommends that Congress clarify the rules associated with the proposal regarding implementing a minimum tax on corporate adjusted financial statement income due to complexity and because it may have many significant and potentially negative implications. For example, imposing tax according to financial statement income takes the definition of taxable income out of Congress's hands and puts it into the hands of industry regulators and others. There are many key conceptual differences between financial income and taxable income, including the concept of materiality. Congress tried a similar book approach in 1986 with the Business Untaxed Reported Profits (BURP). This approach was quickly repealed because many firms and businesses adjusted their financial accounting choices to reduce their income rather than having a primary focus of providing the most transparent and useful financial results to the capital markets. Generally Accepted Accounting Principles (GAAP) should focus exclusively on investors and creditors needs. Income tax provisions should not influence company decisions as to the adoption of accounting methods. These types of distortions could potentially harm shareholders and creditors who depend on financial statements for important information. Public policy

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taxation goals should not have a role in influencing accounting standards or the resulting financial reporting. Independence and objectivity of accounting standards are the backbone of our capital markets system.

Section² 56A(c) introduces “General Adjustments” to “applicable financial statements.” The first adjustment requires adjustments to be made for tax years of entities that vary from financial statement years. Accounting processes often include year-end audit and other adjustments that would need to be allocated to the intervening time period(s) of the various entities. Additionally, section 441(b)(1) requires conformity between the taxable year and the taxpayer’s “annual accounting period.” There should not be that many companies for whom the tax year diverges from the annual accounting period. That requirement introduces a level of complexity and expense that is not reasonable and that provision is likely unnecessary.

The subsequent general adjustment under section 56A(c)(2) is confusing. The first part (A) could be construed as identifying a foreign parent of a US group of companies as the applicable financial statement. (B) of that section then identifies different circumstances, determined by members of a consolidated return. Therefore, section 56A(c)(2) needs significant clarification.

In addition, the proposed Corporate Profits Minimum Tax appears to fundamentally alter the foreign tax credit system that has been in place since 1962 in section 56A(c)(3). The current CFC/Subpart F rules are the product of a compromise between the Kennedy Administration and Congress. Since this compromise was agreed to, nearly sixty years ago, companies that pay foreign tax at a rate that is equal to at least the US federal income tax rate have, with certain limitations, been able to offset the U.S. federal income tax effect of deemed dividend/phantom income from CFCs. The proposed Corporate Profits Minimum Tax introduces a new limitation on the utilization of such foreign taxes already paid on CFC income. This new limitation is in the form of the foreign tax “taken into account on the taxpayer’s applicable financial statement.” Also, regarding foreign tax credits, if there is a limit on the foreign tax credits to those in the applicable financial statements (AFS), we have concerns with what happens if the taxpayer does not know about foreign taxes paid during the short crunch time of preparing the AFS, and we have concerns with foreign redeterminations after audits.

Section 56A(c)(4) regarding general adjustments requires an add-back to net income in the applicable financial statements for Federal income taxes, or foreign income, war profits, or excess profits (as defined in section 901). The tax provision of a company is an accounting *estimate* pursuant to Accounting Standards Codification Topic 740. That estimate includes both current and deferred tax provisions for domestic and foreign income taxes. This corporate minimum tax is, therefore, applied to mismatched income between what is included in the tax provision (both currently taxable and deferred income) versus what is included in the tax return (only currently taxable income). The language of this provision should be altered to include only currently taxable income. The complexity of adjustments between those income

² All references to “section” (unless referencing the House reconciliation legislation) are to the Internal Revenue Code of 1986, as amended, unless otherwise specified.

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amounts represents an insurmountable degree of complexity and cost of compliance for both taxpayers and the government.

For the reasons discussed above, the proposed Corporate Profits Minimum Tax will substantially increase the complexity of the Internal Revenue Code. We acknowledge that those business entities targeted by this specific legislation are, in most cases, able to internally or externally hire the requisite specialists to be able to comply with their increased tax compliance obligations. However, we are concerned that this proposed legislation represents a “slippery slope” that will result in these highly complex tax provisions being “pushed down” to smaller companies who are in a weaker position to comply.

Overall, this *Corporate Profits Minimum Tax* proposal presents forth a fundamental shift in taxation of U.S. entities and could result in uncertain results to taxpayers and a costly compliance requirement.

The AICPA is the world’s largest member association representing the accounting profession, with more than 428,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America’s largest businesses.

We welcome the opportunity to discuss these comments on the reconciliation legislation or to answer any questions that you may have. If you have any questions, please contact; Edward Karl, AICPA VP Taxation, at (202) 355-4892, or edward.karl@aicpa-cima.com; Lauren Pfingstag, Director – AICPA Congressional or Political Affairs, at (407) 257-0607, or lauren.pfingstag@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,



Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Finance
Members of the House Committee on Ways and Means
Mr. Thomas Barthold, Chief of Staff, Joint Committee on Taxation
The Honorable Janet Yellen, Secretary of the Treasury
The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury
Mr. Mark Mazur, Deputy Assistant Secretary for Tax Policy, Department of the Treasury
The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service